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**Memorandum**

September 12, 2005

**TO:** Honorable John Conyers, Jr.  
Attention: Perry Apfelbaum and Ted Kalo

**FROM:** [REDACTED]  
Legislative Attorney  
American Law Division

**SUBJECT:** Hurricane Katrina-Stafford Act Authorities and Actions by Governor Blanco and President Bush to Trigger Them

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This memorandum is in response to your request that we examine "the applicable law and legal requests pertaining to Hurricane Katrina, and confirm whether or not the necessary steps were taken to give the Federal Government in general, and the Federal Emergency Management Agency (FEMA) in particular, the legal authority needed to act to save lives and mitigate the damage stemming from Hurricane Katrina in Louisiana."<sup>1</sup> We begin by reviewing the mechanisms provided in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. § 5121 *et seq.*, (Stafford Act) for the declaration of a major disaster and for the declaration of an emergency, and note the scope of the federal response authorized under each type of declaration. We then note the official requests by the Governor of Louisiana and the responses to those requests by President George W. Bush in connection with declarations of emergency and major disaster.

The Stafford Act is designed to provide a means by which the federal government may supplement state and local resources in major disasters or emergencies where those state and local resources have been overwhelmed. The Act provides separate but similar mechanisms for declaration of a major disaster and for declaration of an emergency. Except to the extent that an emergency involves primarily federal interests, both declarations of major disaster and declarations of emergency must be triggered by a request to the President from the Governor of the affected state. The pertinent provisions with respect to such declarations are set forth in Section 401 of the Stafford Act, 42 U.S.C. § 5170, with respect to major disasters declarations and in Section 501 of the Stafford Act, 42 U.S.C. § 5191, with respect to emergency declarations:

§ 5170. Procedure for declaration

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<sup>1</sup> Letter of September 7, 2005, from the Honorable John Conyers, Jr., to Ms. Elizabeth Bazan and Mr. Charles Doyle, American Law Division, Congressional Research Service, at 1.

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All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this chapter, the Governor shall take appropriate response action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this chapter. Based on the request of a Governor under this section, the President may declare under this chapter that a major disaster or emergency exists.

## § 5191. Procedure for declaration

## (a) Request and declaration

All requests for a declaration by the President that an emergency exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of such request, and as a prerequisite to emergency assistance under this chapter, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. The Governor shall furnish information describing the State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may declare that an emergency exists.

## (b) Certain emergencies involving Federal primary responsibility

The President may exercise any authority vested in him by section 5192 of this title or section 5193 of this title with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. In determining whether or not such an emergency exists, the President shall consult the Governor of any affected State, if practicable. The President's determination may be made without regard to subsection (a) of this section.

A major disaster declaration by the President opens the door to two types of federal disaster assistance: general federal assistance under Section 402(a) of the Stafford Act, 42 U.S.C. § 5170a, and essential federal assistance under Section 403 of the Stafford Act, 42 U.S.C. § 5170b. These provide:

## § 5170a. General Federal assistance

In any major disaster, the President may--

- (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts;
- (2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;
- (3) provide technical and advisory assistance to affected State and local governments for--
  - (A) the performance of essential community services;

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- (B) issuance of warnings of risks and hazards;
  - (C) public health and safety information, including dissemination of such information;
  - (D) provision of health and safety measures; and
  - (E) management, control, and reduction of immediate threats to public health and safety; and
- (4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

## § 5170b. Essential assistance

## (a) In general

Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:

## (1) Federal resources, generally

Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this chapter.

## (2) Medicine, food, and other consumables

Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine, food, and other consumable supplies, and other services and assistance to disaster victims.

## (3) Work and services to save lives and protect property

Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including—

## (A) debris removal;

(B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, and other essential needs, including movement of supplies or persons;

(C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;

(D) provision of temporary facilities for schools and other essential community services;

(E) demolition of unsafe structures which endanger the public;

(F) warning of further risks and hazards;

(G) dissemination of public information and assistance regarding health and safety measures;

(H) provision of technical advice to State and local governments on disaster management and control; and

(I) reduction of immediate threats to life, property, and public health and safety.

## (4) Contributions

Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.

## (b) Federal share

The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.

## (c) Utilization of DOD resources

## (1) General rule

During the immediate aftermath of an incident which may ultimately qualify for assistance under this subchapter or subchapter IV-A of this chapter, the Governor of the State in which such incident occurred may request the President to direct the

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Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.

## (2) Rules applicable to debris removal

Any removal of debris and wreckage carried out under this subsection shall be subject to section 5173(b) of this title, relating to unconditional authorization and indemnification for debris removal.

## (3) Expenditures out of disaster relief funds

The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this chapter.

## (4) Federal share

The Federal share of assistance under this subsection shall be not less than 75 percent.

## (5) Guidelines

Not later than 180 days after November 23, 1988, the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this chapter.

## (6) Definitions

For purposes of this section—

## (A) Department of Defense

The term "Department of Defense" has the meaning the term "department" has under section 101 of Title 10.

## (B) Emergency work

The term "emergency work" includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services.

The declaration of an emergency by the President makes federal emergency assistance available. The pertinent statutory provision, Section 502 of the Stafford Act, 42 U.S.C. § 5192, states:

## § 5192. Federal emergency assistance

## (a) Specified

In any emergency, the President may—

- (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;
- (2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;
- (3) provide technical and advisory assistance to affected State and local governments for—

- (A) the performance of essential community services;
- (B) issuance of warnings of risks or hazards;
- (C) public health and safety information, including dissemination of such information;
- (D) provision of health and safety measures; and
- (E) management, control, and reduction of immediate threats to public health and safety;

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- (4) provide emergency assistance through Federal agencies;
- (5) remove debris in accordance with the terms and conditions of section 5173 of this title;
- (6) provide assistance in accordance with section 5174 of this title; and
- (7) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

## (b) General

Whenever the Federal assistance provided under subsection (a) of this section with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe.

As reflected in the attachments you provided with your letter, Governor Kathleen Babineaux Blanco requested, by letter dated August 27, 2005, addressed to the President of the United States, through the Regional Director of FEMA Region VI, that the President declare an emergency for the State of Louisiana due to Hurricane Katrina for the time period from August 26, 2005, and continuing, pursuant to Section 501(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206, and implemented by 44 C.F.R. § 206.35.<sup>2</sup> The Governor's letter indicated that the affected areas were "all the southeastern parishes including the New Orleans Metropolitan area and the mid state Interstate I-49 corridor and northern parishes along the I-20 corridor that are accepting the thousands of citizens evacuating from the areas expecting to be flooded as a result of Hurricane Katrina."<sup>3</sup> The letter also indicated that Governor Blanco, "[i]n response to the situation [had] taken appropriate action under State law and directed the execution of the State Emergency Plan on August 26, 2005 in accordance with Section 501(a) of the Stafford Act." Her letter stated further, "A State of Emergency has been issued for the State in order to support the evacuation of the coastal areas in accordance with our State Evacuation Plan and the remainder of the state to support the State Special Needs and Sheltering Plan."<sup>4</sup>

Governor Blanco's August 27, 2005, request for an emergency declaration also included her determination, pursuant to 44 C.F.R. § 206.35, that "the incident is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments and that supplementary Federal assistance is necessary to save lives, protect property, public health, and safety, or to lessen or avert the threat of disaster."<sup>5</sup> She specifically requested "emergency protective measures, direct Federal Assistance, Individual and Household Program (IHP) assistance, Special Needs Program assistance, and debris removal."<sup>6</sup> She provided preliminary estimates of the type and amount of emergency assistance needed under the Stafford Act and emergency assistance from certain federal agencies under other statutory authorities, indicated the nature and amount of state and local resources being or to be used to alleviate the conditions of the emergency, and certified that the State of Louisiana and local governments would assume all non-federal share of costs required by the Stafford Act.

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<sup>2</sup> This letter may also be found on the website of Governor Blanco, at [http://www.gov.state.la.us/Press\\_Release\\_detail.asp?id=976](http://www.gov.state.la.us/Press_Release_detail.asp?id=976) (August 27, 2005, letter from Governor Blanco to President Bush). A copy of the letter is attached hereto for your convenience.

<sup>3</sup> August 27, 2005, letter from Governor Blanco to President Bush, at 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*



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A White House press release dated August 27, 2005, indicated that, on that date, President Bush "declared an emergency exists in the State of Louisiana and ordered Federal aid to supplement state and local response efforts in the parishes located in the path of Hurricane Katrina beginning on August 26, 2005, and continuing." The press release indicates:

The President's action authorizes the Department of Homeland Security, Federal Emergency Management Agency (FEMA), to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title VI of the Stafford Act, to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the parishes of Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Caldwell, Claiborne, Catahoula, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Jackson, LaSalle, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Pointe Coupee, Oachita, Rapides, Red River, Richland, Sabine, St. Helena, St. Landry, Tensas, Union, Vernon, Webster, West Carroll, West Feliciana, and Winn.

Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the emergency. Debris removal and emergency protective measures, including direct Federal assistance, will be provided at 75 percent Federal Funding.

The press release stated further that Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, representing FEMA, had named William Lokey as the Federal Coordinating Officer for federal recovery operations in the affected area. The President's declaration of emergency for Louisiana (FEMA-3212-EM) was published in the *Federal Register* at 70 *Fed. Reg.* 53238 (Sept. 7, 2005). A copy of this is attached to this memorandum for your convenience.

By a letter dated August 28, 2005, to the President through the Regional Director, FEMA Region VI, Governor Blanco requested that President Bush "declare an expedited major disaster for the State of Louisiana as Hurricane Katrina, a Category V Hurricane, approaches our south coast of New Orleans, beginning on August 28, 2005 and continuing. The affected areas include all southeastern parishes including the City of New Orleans directly impacted by the brunt of the storm and the mid state and northern parishes accepting the thousands of citizens forced to evacuate from the impacted areas directly affected by Hurricane Katrina."<sup>7</sup> Her letter identified the parishes expected to receive major damage from the hurricane, those parishes anticipated to receive significant damage from tropical storm force wind and heavy rain after Hurricane Katrina's landfall, and those parishes affected by the evacuation of persons from the southeastern parishes in implementation of the Louisiana Shelter Operations Plan. The letter further indicated that the Governor had taken appropriate action under state law, had directed execution of the State Emergency Plan on August 26, 2005, and had declared a state of emergency for the state to support the

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<sup>7</sup> Letter dated August 28, 2005, from Governor Blanco to President Bush through the Regional Director, FEMA Region VI, requesting the President to declare an expedited major disaster for the State of Louisiana from August 28, 2005, and continuing, at 1 (hereinafter Letter of August 28, 2005, from Governor Blanco to President Bush). Copies of this letter and other letters dated September 2, 3, and 5, 2005, from Governor Blanco to President Bush relating to Hurricane Katrina may be found at <http://www.gov.state.la.us/govletters.asp>.

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evacuations of the coastal areas and the rest of the state to support the State Evacuation and Sheltering Plan. In her letter, the Governor indicated that a preliminary damage assessment would be conducted as soon after landfall as possible and stated the Governor's determination that the incident would be of such severity and magnitude that effective response would be beyond the state and local governments' capabilities and would require supplementary federal assistance. She outlined the nature and amount of state and local resources that had been or would be used to alleviate the conditions resulting from the disaster. Insofar as federal assistance was concerned, Governor Blanco expressly requested:

Individual Assistance, including the Individual and Household Program (IHP), Disaster Unemployment Assistance, Crisis Counseling, Public Assistance (Category A-G funding at 100%), Small Business Administration (SBA) disaster loans and Direct Federal Assistance (DFA) funding at 100% for the following parishes: Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermillion, Washington, West Baton Rouge, and West Feliciana.

To support the evacuation/sheltering effort, I am also requesting Individual Assistance, including the Individual and Household Program (IHP), Crisis Counseling, and Public Assistance (Category B) for the following parishes: Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, Desoto, East Carroll, Evangeline, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Landry, Tensas, Union, Vernon, Webster, West Carroll, and Winn.<sup>8</sup>

Noting that the State Hazard Mitigation Plan had been approved by FEMA on April 15, 2005, Governor Blanco requested hazard mitigation for eligible applicants having a FEMA approved Local Hazard Mitigation Plan and for those parishes approved within the application period for this disaster. In light of the extraordinary nature of the hurricane and anticipated damage to impacted areas including the New Orleans Metropolitan Area, the Governor requested an increase of the federal cost share to 100% for Individual Assistance, all categories of Public Assistance, and Direct Federal Assistance, while certifying that the state and local governments would assume the applicable non-federal share of costs required by the Stafford Act. She requested direct federal assistance for work and services to save lives and property, including a direct debris removal mission, and agreed to indemnify and hold the United States harmless for any claims arising from removal of debris or wreckage from the disaster.<sup>9</sup>

On August 29, 2005, President Bush declared a major disaster for the State of Louisiana (FEMA-1603-DR), beginning on August 29, 2005, and continuing. This major disaster declaration was amended on September 1, 2005, and again on September 4, 2005.<sup>10</sup> The

<sup>8</sup> Letter of August 28, 2005, from Governor Blanco to President Bush, at 1-2.

<sup>9</sup> *Id.*, at 2-3.

<sup>10</sup> The August 29, 2005, major disaster declaration and the September 1, 2005 amendment to the declaration are available in the *Federal Register* at 70 *Fed. Reg.* 53803 (September 12, 2005). Copies of these are attached hereto for your convenience. All three of the *Federal Register* notices are also available on the FEMA website. These appear at:  
(continued...)

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major disaster declaration was reflected in a series of *Federal Register* notices signed by Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Department of Homeland Security. The original declaration of a major disaster, as reflected in the first of these *Federal Register* notices, provided:

Notice is hereby given that, in a letter dated August 29, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, and Hazard Mitigation in the designated areas; and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 C.F.R. 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. For a period of up to 72 hours, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs. Federal funding for debris removal will remain at 75 percent.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William Lokey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

<sup>10</sup> (...continued)

<http://www.fema.gov/news/dfr.fema?id=4506>, <http://www.fema.gov/news/dfr.fema?id=4526>, and <http://www.fema.gov/news/dfr.fema?id=4525>.



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I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

The parishes of Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana for Individual Assistance.

The parishes of Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana for Public Assistance Categories A and B (debris removal and emergency protective measures), including direct Federal assistance. For a period of up to 72 hours, assistance for emergency protective measures, including direct Federal assistance, will be provided at 100 percent of the total eligible costs. The period of up to 72 hours at 100 percent excludes debris removal.

The parishes of Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, Desoto, East Carroll, Evangeline, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, St. Landry, Tensas, Union, Vernon, Webster, West Carroll, and Winn for Public Assistance Category B (emergency protective measures), including direct Federal assistance, will be provided at 100 percent of the total eligible costs.

The parishes of St. Mary, St. Tammany, and Ouachita in the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)<sup>11</sup>

Because of the severity and magnitude of the disaster, the original disaster declaration was amended on September 1, 2005, as follows:

Notice is hereby given that, in a letter dated September 1, 2005, the President amended the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (Stafford Act), in a letter to Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient

<sup>11</sup> Federal Register Notice of declaration of major disaster for Louisiana, effective August 29, 2005, published at 70 Fed. Reg. 53803 (Sept. 12, 2005).

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severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (the Stafford Act).

Therefore, I amend my declaration of August 29, 2005, to authorize Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program at 100 percent of total eligible costs, for a 60-day period retroactive to the date of the major disaster declaration.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify Governor Blanco and the Federal Coordinating Officer of this amendment to my major disaster declaration.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)<sup>12</sup>

On September 4, 2005, the major disaster declaration was again amended. This amendment is reflected in a *Federal Register* notice signed by Under Secretary Brown, as follows:

The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 29, 2005:

The parishes of Ascension, Assumption, East Baton Rouge, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, and West Baton Rouge for Public Assistance [Categories C-G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B] under the Public Assistance program, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds:

97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment

<sup>12</sup> *Federal Register* Notice, Amendment, effective September 1, 2005, to the Louisiana major disaster declaration, published at 70 *Fed. Reg.* 53803 (Sept. 12, 2005).

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Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)<sup>13</sup>

## Conclusions

From the above review of the statutory authorities under the Stafford Act, the letters of Governor Blanco to President Bush requesting first a declaration of emergency and then a major disaster declaration in anticipation of the effects of Hurricane Katrina, as well as the President's responses to those requests in declaring a state of emergency with respect to Louisiana effective August 26, 2005, and continuing, and declaring a major disaster with respect to Louisiana effective August 28, 2005, and continuing, it would appear that the Governor did take the steps necessary to request emergency and major disaster declarations for the State of Louisiana in anticipation of Hurricane Katrina. In response to the Governor's requests, it appears that the President did take the steps necessary to trigger the availability of Stafford Act emergency assistance and disaster assistance, by declaring first a state of emergency, and later a major disaster, and authorizing specific Stafford Act assistance to be made available to the State of Louisiana to respond to the effects of the Hurricane. We hope that this will be of assistance to you.

<sup>13</sup> Federal Register Notice, Amendment 2 to major disaster declaration with respect to Louisiana, available at <http://www.fema.gov/newmedia/fema?id=4525>.



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Scheduling

→ Today is Monday, September 12, 2005

Press Release

Date: 8/26/2005

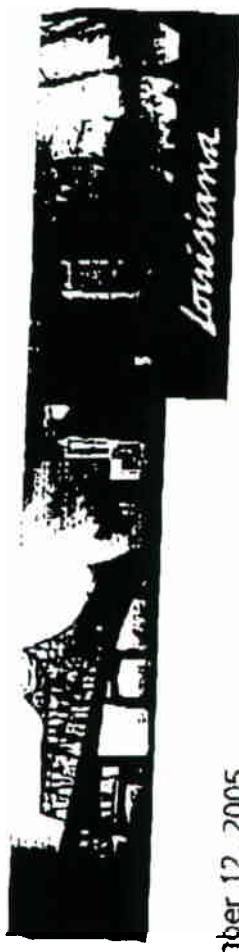
Contact: Denise Boltcher or Roderick Hawkins at 225-342-9037

## Governor Blanco Declares State of Emergency

BATON ROUGE, LA--Governor Kathleen Babineaux Blanco today issued Proclamation No. 48 KBB 2005, declaring a state of emergency for the state Louisiana as Hurricane Katrina poses an imminent threat, carrying severe storms, high winds, and torrential rain that may cause flooding and damage to private property and public facilities, and threaten the safety and security of the citizens of the state of Louisiana. The state of emergency extends from Friday, August 26, 2005, through Sunday, September 25, 2005, unless terminated sooner.

The full text of Proclamation No. 48 KBB 2005 is as follows:

WHEREAS, the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., confers upon the governor of the state of Louisiana emergency powers to deal with emergencies and disasters, including those caused by fire, flood, earthquake or other natural or man-made causes, in order to ensure that preparations of this state will be adequate to deal with such emergencies or disasters and to preserve the



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EDITORIAL: Blanco making jobs her work

EDITORIAL: Rush Out of Touch with Us

EDITORIAL: Come Fly with Me

EDITORIAL: Coastal Advocates Dismayed by Bush's Opposition

EDITORIAL: President Bush, Save Our Coast



lives and property of the citizens of the state of Louisiana;

WHEREAS, when the governor finds a disaster or emergency has occurred, or the threat thereof is imminent, R.S. 29:724(B) (1) empowers her to declare the state of disaster or emergency by executive order or proclamation, or both; and

WHEREAS, On August 26, 2005, Hurricane Katrina poses an imminent threat to the state of Louisiana, carrying severe storms, high winds, and torrential rain that may cause flooding and damage to private property and public facilities, and threaten the safety and security of the citizens of Louisiana;

NOW THEREFORE, KATHLEEN BABINEAUX BLANCO,

Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

**SECTION 1:** Pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721, et seq., a state of emergency is declared to exist in the state of Louisiana as Hurricane Katrina poses an imminent threat, carrying severe storms, high winds, and torrential rain that may cause flooding and damage to private property and public facilities, and threaten the safety and security of the citizens of the state of Louisiana;

**SECTION 2:** The state of Louisiana's emergency response and recovery program is activated under the command of the director of the state office of Homeland Security and Emergency Preparedness to prepare for and provide emergency support services and/or to minimize the effects of the storm's damage.

**SECTION 3:** The state of emergency extends from Friday,

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August 26, 2005, through Sunday, September 25, 2005, unless terminated sooner.

###

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See how over and over**

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# Office of the Governor

*White House*

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→ Today is Monday, September 12, 2005

Press Release

Date: 8/27/2005

Contact: Denise Bottcher or Roderick Hawkins at 225-342-9037



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[Governor Blanco's Memo to President to Declare an Emergency for  
the State of Louisiana due to Hurricane Katrina](#)

**BATON ROUGE**—Today Governor Kathleen Babineaux  
Blanco forwarded a letter to President Bush requesting that he  
declare an emergency for the State of Louisiana due to  
Hurricane Katrina. The full text of the letter follows:

August 27, 2005

The President  
The White House  
Washington, D. C.

Through:  
Regional Director  
FEMA Region VI  
800 North Loop 288  
Denton, Texas 76209

2005

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Dear Mr. President:

Under the provisions of Section 501 (a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (Stafford Act), and implemented by 44 CFR § 206.35, I request that you declare an emergency for the State of Louisiana due to Hurricane Katrina for the time period beginning August 26, 2005, and continuing. The affected areas are all the southeastern parishes including the New Orleans Metropolitan area and the mid state Interstate I-49 corridor and northern parishes along the I-20 corridor that are accepting the thousands of citizens evacuating from the areas expecting to be flooded as a result of Hurricane Katrina.

under State law and directed the execution of the State Emergency Plan on August 26, 2005 in accordance with Section 501 (a) of the Stafford Act. A State of Emergency has been issued for the State in order to support the evacuations of the coastal areas in accordance with our State Evacuation Plan and the remainder of the state to support the State Special Needs and Shelters Plan.

Pursuant to 44 CFR § 206.35, I have determined that this incident is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments, and that supplementary Federal assistance is necessary to save lives, protect property, public health, and safety, or to lessen or avert the threat of a disaster. I am specifically requesting emergency protective measures, direct Federal Assistance, Individual and Household Program (IHP) assistance, Special Needs Program assistance, and debris removal.

Preliminary estimates of the types and amount of emergency assistance needed under the Stafford Act, and emergency

Governor's Letter to  
Bill O'Reilly

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**FACT SHEET**  
Fiscal Year  
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assistance from certain Federal agencies under other statutory authorities are tabulated in Enclosure A.

The following information is furnished on the nature and amount of State and local resources that have been or will be used to alleviate the conditions of this emergency:

- Department of Social Services (DSS): Opening (3) Special Need Shelters (SNS) and establishing (3) on Standby.
- Department of Health and Hospitals (DHH): Opening (3) Shelters and establishing (3) on Standby.
- Office of Homeland Security and Emergency Preparedness (OHSEP): Providing generators and support staff for SNS and Public Shelters.

• Louisiana State Police (LSP): Providing support for the

• Louisiana Department of Wildlife and Fisheries (WLF): Supporting the evacuation of the affected population and preparing for Search and Rescue Missions.

Mr. President

Page Two

August 27, 2005

- Louisiana Department of Transportation and Development (DOTD): Coordinating traffic flow and management of the evacuations routes with local officials and the State of Mississippi.

The following information is furnished on efforts and resources of other Federal agencies, which have been or will be used in responding to this incident:

- FEMA ERT-A Team en-route.

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LA has ranked high in national surveys.

I certify that for this emergency, the State and local governments will assume all applicable non-Federal share of costs required by the Stafford Act.

I request Direct Federal assistance for work and services to save lives and protect property.

(a) List any reasons State and local government cannot perform or contract for performance, (if applicable).

(b) Specify the type of assistance requested.

In accordance with 44 CFR 5.206-208, the United States shall, without cost to the United States, all lands, interests, and rights of ways necessary to accomplish the approved work.

2. Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work;

3. Provide reimbursement to FEMA for the non-Federal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement; and

4. Assist the performing Federal agency in all support and local jurisdictional matters.

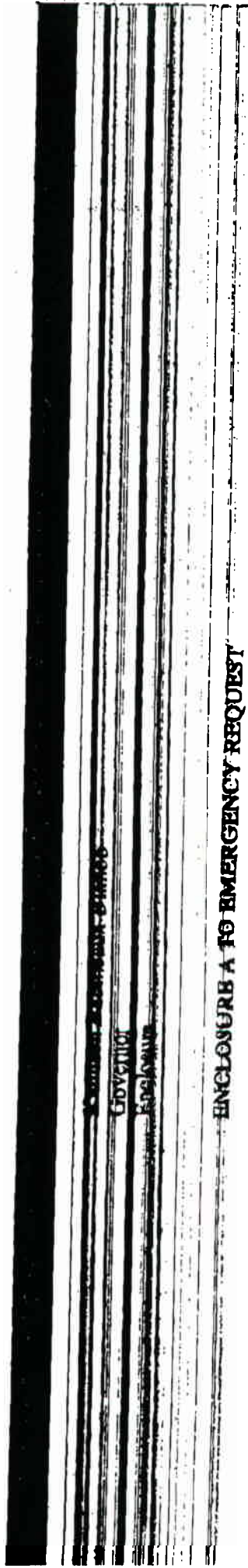
In addition, I anticipate the need for debris removal, which poses an immediate threat to lives, public health, and safety.

Pursuant to Sections 502 and 407 of the Stafford Act, 42 U.S.C. §§ 5192 & 5173, the State agrees to indemnify and hold harmless the United States of America for any claims arising

from the removal of debris or wreckage for this disaster. The State agrees that debris removal from public and private property will not occur until the landowner signs an unconditional authorization for the removal of debris.

I have designated Mr. Art Jones as the State Coordinating Officer for this request. He will work with the Federal Emergency Management Agency in damage assessments and may provide further information or justification on my behalf.

Sincerely,



ENCLOSURE A TO EMERGENCY REQUEST

- Estimated requirements for other Federal agency programs:
- Department of Social Services (DSS): Opening (3) Special Need Shelters (SNS) and establishing (3) on Standby. Costs estimated at \$500,000 per week for each in operation.
  - Department of Health and Hospitals (DHH): Opening (3) Shelters and establishing (3) on Standby. Costs estimated at \$500,000 per week for each in operation.
  - Office of Homeland Security and Emergency Preparedness (OHSEP): Providing generators and support staff for SNS and Public Shelters. Costs estimated to range from \$250,000-\$500,000 to support (6) Shelter generator operations.
  - Louisiana State Police (LSP): Costs to support evacuations -

\$300,000 for a non-direct landfall.

- Louisiana Department of Wildlife and Fisheries (WLF): Costs to support evacuations - \$200,000 for a non-direct landfall.
- Louisiana Department of Transportation and Development (DOTD): Costs to support evacuations - \$2,000,000 for a non-direct landfall.

Totals: \$ 9,000,000

Estimated Requirements for assistance under the Stafford Act:

Coordination: \$0  
Technical and advisory assistance: \$0

Individuals and Households Program (IHP): \$0  
Provision of emergency supplies: \$0

Totals: \$ 2,000,000  
Grand Total: \$ 9,000,000



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FEDERAL REGISTER

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Notices

DEPARTMENT OF HOMELAND SECURITY (DHS)

Emergency Preparedness and Response Directorate

Federal Emergency Management Agency (FEMA)

FEMA-1160-DR

Louisiana: Major Disaster and Related Determinations

70 FR 13003

DATE: Monday, September 12, 2005

ACTION: Notice.

**SUMMARY:** This is a notice of Presidential Declaration of a major disaster for the State of Louisiana (FEMA-1160-DR) dated August 29, 2005, and related determinations.

**EFFECTIVE DATE:** August 29, 2005

**FOR FURTHER INFORMATION CONTACT:** Nancy Ellis, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 29, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the damage to certain areas of the State of Louisiana, resulting from Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

MFR 3803

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, and Hazard Mitigation in the designated areas; and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.23 (d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. For a period of up to 72 hours, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs. Federal funding for debris removal will remain at 75 percent.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act. The time period prescribed for the implementation of section 310(a) Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William Loker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

The parishes of Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana for Individual Assistance.

The parishes of Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana for Public Assistance (Categories A and B (debris removal and emergency protective measures), including direct Federal assistance. For a period of up to 72 hours, assistance for emergency protective measures, including direct Federal assistance, will be provided at 100 percent of the total eligible costs. The period of up to 72 hours at 100 percent excludes debris removal.

The parishes of Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, Desoto, East Carroll, Evangeline, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches,



FR 99003

Ouachita, Rapides, Red River, Richland, Sabine, St. Landry, Tensas, Union, Vernon, Webster, West Carroll, and Winn for Public Assistance Category B (emergency protective measures) including direct Federal assistance, will be provided at 100 percent of the total eligible costs.

The parishes of St. Mary, St. Tammany, and Ouachita in the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program--Other Needs; 97.051, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

FR Doc. 05-17994 Filed 9-9-05; 8:45 AM

BILLING CODE 9110-10-P

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FEDERAL REGISTER

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Notices

DEPARTMENT OF HOMELAND SECURITY (DHS)

Emergency Preparedness and Response Directorate

Federal Emergency Management Agency (FEMA)

FEMA-1603-DR

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

70 FR 11303

DATE: Monday, September 12, 2005

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-1603-DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: September 1, 2005

FOR FURTHER INFORMATION CONTACT: Monica Kulis, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 1, 2005, the President amended the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act), in a letter to Michael D. Brown, Under Secretary for Emergency Preparedness and Response, Federal Emergency Management Agency, Department of Homeland Security as follows:

I have determined that the damage to certain areas of the State of Louisiana, resulting from Hurricane Katrina beginning on August 29, 2005, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act).

Therefore, I amend my declaration of August 29, 2005, to authorize Federal funds for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program at 100



70 P. 51803, 53804

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percent of total eligible costs for a 60 day period retroactive to the date of the major disaster declaration.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal Assistance eligible for such adjustments under the law. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408), and the Hazard Mitigation Grant Program (Section 409). These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify Governor Blanco and the Federal Coordinating Officer of this amendment to my major disaster declaration.

This cost share is effective as of the date of the President's major disaster declaration.


(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.031, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs; 97.039, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

FR Doc. 05-17995 Filed 9-9-05; 8:45 a.m.

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Federal Emergency Management Agency

FEMA-1603-DR

Emergency Management No. 2 in Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA-1603-DR), dated August 29, 2005, and related determinations.

EFFECTIVE DATE: September 4, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 29, 2005:

The parishes of Ascension, Assumption, East Baton Rouge, Iberia, Iberville, Jefferson, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, and West Baton Rouge for Public Assistance (Categories C-G) (already designated for Individual Assistance and debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, including direct Federal assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds:

97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

/s/

Michael D. Brown,  
Under Secretary,

Emergency Preparedness and Response.

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Last Updated: Sunday, 04-Sep-2005 21:42:47

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